

IN THE CORONERS COURT  
OF VICTORIA  
AT MELBOURNE

Court Reference: COR 2008 0984

**FINDING INTO DEATH WITH INQUEST<sup>1</sup>**

*Form 37 Rule 60(1)*

*Section 67 of the Coroners Act 2008*

*Amended pursuant to Section 77 of the Coroners Act 2008 (Vic)*

**Inquest into the Death of: JAMES JOHN RUSSOUW**

Hearing Dates:	29 and 30 April and 1, 2 and 3 May 2013.
Appearances:	Mr S Holt of Counsel on behalf of Mr Anthony Ngonvoraraj  Mr T Sullivan of Counsel on behalf of Mr Scott O'Brien
Police Coronial Support Unit:	Leading Senior Constable Amanda Maybury, Assisting the Coroner at Inquest  Leading Senior Constable Darren Cathie, Assisting the Coroner at Delivery of Amended Finding
Findings of:	AUDREY JAMIESON, CORONER
Delivered on:	9 November 2015
Amended Finding Delivered :	17 April 2018
Delivered At:	Coroners Court of Victoria 65 Kavanagh Street Southbank VIC 3006

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<sup>1</sup> The Finding does not purport to refer to all aspects of the evidence obtained in the course of the Investigation. The material relied upon included statements and documents tendered in evidence together with the Transcript of proceedings and submissions of legal representatives/Counsel. The absence of reference to any particular aspect of the evidence, either obtained through a witness or tendered in evidence does not infer that it has not been considered.

I, AUDREY JAMIESON, Coroner having investigated the death of JAMES JOHN RUSSOUW  
AND having held an Inquest in relation to this death on 29 and 30 April and 1, 2 and 3 May 2013.

at 222 Exhibition Street, Melbourne

find that the identity of the deceased was JAMES JOHN RUSSOUW

born 21 June 1983

and the death occurred on 7 March 2008

at Burwood East Reserve, Burwood Highway, Burwood East 3151

**from:**

1a. STAB INJURY TO THE NECK

**in the following summary of circumstances:**

1. Mr James John Russouw died on 7 March 2008 after he received a stab injury to the neck whilst at the Burwood East Reserve. His car was subsequently set on fire with his body in it.
2. The death of Mr Russouw was *reportable* as defined in *Coroners Act 1985 (Vic)* (as it then was).
3. An Inquest was held into the death of Mr Russouw on 29 and 30 April and 1, 2 and 3 May 2013. pursuant to section 52(2)(a) *Coroners Act 2008 (Vic)* (the Act).

**BACKGROUND CIRCUMSTANCES:**

4. James<sup>2</sup> was born on 21 June 1983 and was 24 years old at the time of his death. He lived with his parents in Box Hill until approximately two weeks prior to his death. In February 2008, James moved in with his brother, Craig Russouw in Box Hill South. James held an Advanced Diploma in Audio Engineering and Sound Production and had been substantially unemployed for the last six to twelve months of his life.
5. James had been a long-term cannabis user and would sell cannabis in the Burwood and Vermont areas.
6. James had a number of close friends and was well-liked among his peers. He was commonly described as easy-going, with no known enemies.

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<sup>2</sup> The Russouw family requested that James John Russouw be referred to as James during the course of the Inquest. For consistency, I have, in most part, avoided formality and also referred to him only as James throughout the Finding.

## **SURROUNDING CIRCUMSTANCES:**

7. On Friday, 7 March 2008, James' brother Craig left for work in the morning and observed James asleep on the couch. Craig returned home at approximately 5.00pm and James was outside having a cigarette. James told Craig he was going to see "Chris" who lives in Laburnum or Blackburn to purchase some cannabis from him. James left Craig's home at approximately 6.00pm and returned at approximately 8.00pm.<sup>3</sup>
8. Craig observed James had a small amount of cannabis with him upon his return, which he determined would have been for James' personal use.<sup>4</sup> At approximately 8.00pm, James' friend, Orlando Roccella arrived at Craig's house.<sup>5</sup> Orlando left for approximately one hour and then returned.<sup>6</sup>
9. At some stage during the evening, James received a telephone call on one of his mobile telephones. Craig heard James say something along the lines of "You have got something, cool." This indicated to Craig that James was going to meet someone and purchase some cannabis. Sometime after, Craig heard someone by the name of "Henry" telephone James. Craig asked James why Henry was calling him and James said, "to score".<sup>7</sup>
10. At 8.37pm, James called Mr Simon Cupido's mobile telephone and informed him he was awaiting receipt of cannabis.<sup>8</sup> Simon was a close and family friend of James, and although not related, was often referred to as his 'cousin'.
11. James and Orlando left Craig's house at approximately 10.30pm, heading to Rob Luongo's house in Vermont.<sup>9</sup> The two left Craig's house in separate cars. Shortly after, Orlando noticed a missed call from James' mobile telephone at 10.42pm. Orlando called James back at 10.43pm. James asked where Rob's house was, as he had recently moved. Orlando tried

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<sup>3</sup> Exhibit 1. Craig did not know Chris' surname but said Chris attended the same school as James. Two separate associates of James' stated they had received a call from James at approximately 7.00pm asking if they wanted to purchase cannabis. One called James back at approximately 10.15pm to inquire whether James had any. James said he would call them back, but never did; Exhibit 15, pages 55 and 76, another associate was contacted by James at midday and James informed him he was able to obtain some cannabis and would sell him some on the Sunday; Exhibit 15, page 79; while another associate received a call from James at approximately 6.00pm asking if the associate had any cannabis, which he did. The two met near the Subway car park on Burwood Highway at approximately 7:45pm. Shortly after, James received a call from an associate which sounded like someone James was to on-sell cannabis to. James then asked the associate he met if he would be interested in buying a larger quantity of cannabis; Exhibit 15, pages 59-60.

<sup>4</sup> Exhibit 1.

<sup>5</sup> Exhibit 10.

<sup>6</sup> Exhibit 1. Orlando stated he left Craig's house at 8.00pm and returned at 10.00pm and in this time visited Simon Cupido; Exhibit 10 and Exhibit 11.

<sup>7</sup> Exhibit 1.

<sup>8</sup> Simon states James was involved in purchasing two to five pounds of cannabis at a time and on-selling in quarter pound to one pound lots (Exhibit 11). Another associate also believed James was buying and selling larger amounts of cannabis; Exhibit 15, page 62.

<sup>9</sup> Exhibit 10. Rob states that at approximately 10.30pm he was contacted by James who asked if it was still okay for him and Orlando to come over that night; Exhibit 9. A review of James' phone call charges established this call was made at 10.31pm.

to provide James with directions, and it was decided James would call Orlando back when he drew closer.<sup>10</sup>

12. At approximately 10.50pm, James was recorded on CCTV footage attending the BP service station on Rooks Road, Vermont, where he received a telephone call on his mobile telephone at 10.54pm. This call was later found to have been made from a public telephone situated in the Burwood East Kmart complex.<sup>11</sup>
13. It appears that James then drove to the Burwood East Reserve for what appears to be a drug related transaction. *En route* to the Reserve, James collected an unknown passenger before arriving at the Reserve at 11.03pm.<sup>12</sup> He parked his vehicle adjacent to the rear oval and soon after was stabbed in the neck once with a kitchen knife by an unidentified person or persons. James' body and the interior of the car were doused in petrol and ignited by the unidentified person or persons.
14. At 11.23pm, the Metropolitan Fire Brigade attended in response and extinguished the fire. They thereafter observed human remains in the vehicle. Police attended and a police forensic chemist examined the scene. Dr Michael Burke, Forensic Pathologist from the Victorian Institute of Forensic Medicine (VIFM) also attended. A number of items were seized from the crime scene and conveyed to the Victoria Police Forensic Services Centre, including items that required biological, chemical, pharmacological and fingerprinting examination.

## **INVESTIGATIONS:**

### **Forensic Pathology**

15. Dr Michael Burke, Forensic Pathologist at the Victorian Institute of Forensic Medicine (VIFM), performed an autopsy on the body of James, reviewed a post mortem CT scan and the Form 83 Victoria Police Report of Death. Post mortem examination showed a knife in situ within the left side of the neck. The knife had extended across the neck and divided the

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<sup>10</sup> Exhibit 10. Orlando arrived at Rob's and remained there until the early hours of Saturday morning, 8 March 2008. I note it is unclear from his statement what time he arrived at Rob's. He left just before 2.00am and received a telephone call from Simon asking what he was doing. Orlando said it was unusual for James not to turn up to Rob's. Timing of telephone calls was determined using James' telephone records.

<sup>11</sup> This information was based on Police review of the video security footage from the Kmart complex, Burwood Highway, East Burwood for 7 March 2008 and review of James' telephone records. The CCTV footage showed an unknown male enters the complex from the northern entrance at 10.54pm. The male attends a public telephone box and makes a phone call. A short time later, the male exits through the same door.

<sup>12</sup> Police investigators reviewed the CCTV footage from the Burwood East Basketball Stadium, Burwood Highway for 7 March 2008. James' vehicle was identified entering the stadium car park from the far eastern entrance, off Burwood Highway. The vehicle proceeds south through the car park, before conducting a u-turn passed the eastern side of the centre. A passenger was observed in the vehicle's front passenger seat. The vehicle turns left in the car park, before driving west. Telephone records also indicate Orlando called James' mobile telephone at 11.09pm and 11.14pm. These calls went unanswered.

left carotid artery,<sup>13</sup> and the medial aspect of the right carotid artery. The left internal jugular vein had been divided by the stab defect. Dr Burke stated:

*This would be expected to lead to death as a result of exsanguination from blood loss and lack of blood flow to the brain. Furthermore, the involvement of the jugular veins provides an opportunity for the development of air embolism. The CT scan showed air within the heart. Air may be present from post mortem decomposition, however, in my opinion, the amount of air appeared prominent and certainly raises the probability of air embolism contributing to death...the haemorrhage and involvement of the airway would also lead to blood entering the airway causing hypoxia (lack of oxygen).*

16. No soot was identified within the airway. No evidence of other stab injuries, blunt trauma or projectiles were identified. Post mortem examination showed no evidence of any natural disease process. Toxicological analysis of blood and other bodily fluids retrieved post mortem was negative for alcohol. A metabolite of cannabis was detected.<sup>14</sup> Hydrogen Cyanide was not detected. Dr Burke ascribed the cause of James' death to a stab injury to the neck.

#### *Identity of the deceased*

17. On 9 March 2008, VIFM Forensic Odontologist Dr Linda Steinberg conducted a dental examination on the body and compared post mortem data with James' ante mortem dental records. The results were determined to be compatible with a positive identification of the body as being that of Mr James John Russouw.
18. I therefore find that the identity of the deceased is James John Russouw.

#### **Police Investigation**

19. The Victoria Police Homicide Squad has investigated James' death but have not been able to identify the person or persons responsible.
20. The circumstances of James' death have been the subject of investigation by Victoria Police, specifically Coroner's Investigator Detective Senior Constable (DSC) Simon Hunt, Homicide Squad, on my behalf. DSC Hunt prepared and submitted an inquest brief containing statements from various witnesses and exhibits.

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<sup>13</sup> Dr Burke explained the carotid artery is the main artery supplying blood from the heart to the brain.

<sup>14</sup> The toxicological report stated the metabolite may be detected in bodily fluids for some weeks after use. The report also stated that carboxyhaemoglobin analysis in blood was not possible due to the unsuitability of the specimen.

21. On 8 March 2008, Police investigators attended the home of James' parents. By consent, investigators searched James' former bedroom and located approximately \$60,000 cash.

*Witness statements*

22. Witness Mr Shane Bartlett reported to Police that between 10.30 and 11.00pm on 7 March 2008, he attended the East Burwood Reserve. As he drove to the rear of the reserve, he observed a green EB/EL Ford Falcon Sport Pack sedan GLi model leaving the vicinity, and travel passed him. Moments later, he observed a vehicle on fire.<sup>15</sup>
23. A witness statement obtained from one of James' associates provided evidence that James had been dealing cannabis since 2004. In 2006, James was sourcing cannabis from a supplier in the Sunshine area for on-selling. In late 2007, the Sunshine supplier was no longer able to supply cannabis to James, who subsequently found it difficult to source.<sup>16</sup>
24. This associate recalled James would mainly deal in parks, and was aware that on occasion, James would deal in the East Burwood Reserve. Some years prior to his death, this associate said he had accompanied James to this Reserve for a cannabis-related transaction.
25. This associate stated that these transactions were mainly done at night. James would usually drive to the destination, with the other person arriving most commonly by car. The other person would usually pull up next to James' vehicle, and the transaction would be done through the windows. If a person arrived by foot, which was unusual, they would "jump into the back seat."<sup>17</sup> From this associate's knowledge, "James went to the park to deal weed, it was only to sell and not to buy."<sup>18</sup>
26. James' girlfriend stated that he "was confident about the people he was dealing with and would often go alone to meet people. I had asked him why he wasn't scared of getting caught and James explained that he could tell by someone's voice or if the deal sounded too good to be true...He would also trust someone if they have been dealing with a friend of his."<sup>19</sup>

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<sup>15</sup> Exhibit 6. Shane stated after he observed the vehicle on fire, he heard male voices, turned his car around and left the reserve. En route, he approached the security guard at the basketball stadium and asked him to contact the fire brigade as a car was on fire. On 9 March 2008, Shane was watching television and saw a news item relating to the event, with police asking for help. He called Crime Stoppers and told them what he had seen.

<sup>16</sup> Exhibit 16, pages 64-66.

<sup>17</sup> Exhibit 15, page 65.

<sup>18</sup> Exhibit 15, page 66. This associate explained this was the case as at approximately 2007. This associate also said it was "normal" for James to have approximately \$10,000 on his person in the car, and would carry this much money when he went to purchase cannabis from the Sunshine supplier. This associate was not aware of any other suppliers James used; Exhibit 15, pages 66-67.

<sup>19</sup> Exhibit 15, page 82. His girlfriend also knew of two associates that owed James money, one was apparently a large amount, and James became agitated about it in late 2007, and the associated ceased answering James' calls; pages 82-83.

27. John Howard knows Mr Scott O'Brien<sup>20</sup> through a community work program run at the cemetery where Mr Howard is employed. The two had socialised a couple of times. John knew Scott owned two dark green Fords. One was an early model 1990's sedan, possibly an EB model with XR6 trim, 'Tickford' wheels and a red stripe on the bottom third of the door trim which went around the car. The other vehicle was also a dark green Ford Falcon sedan, which Scott's wife would drive, and which John recalled had some stickers on the front quarter panels left and right, just behind the front wheels. John had seen Scott drive both cars.<sup>21</sup>
28. At the time of James' death, John was living across the road from the East Burwood Reserve. John said the sometime between 10.30pm and midnight on 7 March 2008, Scott came to his house alone. The two had a couple of beers and a chat. John did not notice anything out of the ordinary in Scott's demeanour. Approximately five to 10 minutes after Scott arrived, John heard a loud popping noise in the distance. At the time, he did not think much about it. Scott stayed for approximately thirty minutes. John walked him down the driveway and observed him getting into his green Ford Falcon which he believed was the XR6 model, with the red stripe.
29. John stated that not long after this, he saw Scott in the same car and the red striping had been painted over with green matching body aerosol paint. He said "[t]he car seemed to disappear, as not long [after] he was driving a different car...".<sup>22</sup>
30. An associate of Simon (Cupido) in his statement noted he had supplied Simon with illicit substances and had met James through Simon. Simon's associate said Simon would sometimes call him from a public telephone at the East Burwood Shopping Centre, inside the Kmart store. Simon's associate also recalled an event some years prior where Simon allegedly pulled a knife on him.
31. Simon's associate said that just before New Year's Eve 2008, Simon requested a meeting, where Simon asked "if I know anyone that could get rid of someone or if I could do it...Simon then told me it was his cousin James he wanted to get rid of...Simon told me that he and James had had a big falling out a few days ago. Simon said that James was not loyal to him and was taking his customers away from him. I thought this to mean that James had

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<sup>20</sup> Although Scott has no known association with James, he was interviewed by Victoria Police on 10 June 2008 in relation to James' death. He had attended John's home situated a short distance from the East Burwood Reserve on the evening of 7 March 2008 and was driving a green Ford sedan on that occasion.

<sup>21</sup> Exhibit 8. John said he did not know James. He said it was evident to him that Scott O'Brien was a former drug user.

<sup>22</sup> Exhibit 8, page 173. John said it was about this time that Scott told him about a \$15,000 legal fee he had to pay a solicitor. John said the two have since fallen out of contact. Mr Sullivan of counsel on behalf of Scott O'Brien highlighted that John could not recall the specifics of Scott's language in reference to the \$15,000, whether Scott said he owed this amount, or legal fees in the future would cost this amount; T @ page 114.

been selling drugs to people that Simon had been selling to, which had affected Simon's business which made me believe there was a money issues."<sup>23</sup>

32. Simon stated the he arrived home from work at 8.00pm on 7 March 2008 and at approximately 8.30pm left to attend his friend, Jamie's house in Hampton Park. Simon stated he arrived at Jamie's house at approximately 9.10pm, and left at approximately 9.45pm.<sup>24</sup> Simon provided police with Jamie's telephone details, and police identified 'Jamie' as Jamie Hiareau.
33. Jamie Hiareau of Hampton Park stated "...at no time has Simon ever come to my house while I have been there. I believe Simon would not know where my house is exactly as I have never taken him there".<sup>25</sup>
34. Despite this inconsistency, Simon's mother, May Cupido, provided a statement that said Simon arrived at their cousin's home at approximately 10.00pm on 7 March 2008, and remained at their cousin's home until after midnight.<sup>26</sup>
35. Mr Michael Ngonvoraraj stated he knew James for four to five years, and was aware that his younger brother, Anthony, knew James through him. Michael's birthday was on 6 March 2008 (Thursday). He went out for dinner on his birthday with some of his family and friends. On the Friday (7 March), he arrived home from trade school at approximately 5.00pm and does not remember what he did. He does not recall seeing anyone that evening.<sup>27</sup>
36. Anthony and Michael's mother, Nouansavanh Ngonvoraraj, provided a statement. She said that Anthony had battled with drug addiction and had at times become violent towards his family, who took out an intervention order against him in July 2007. She cannot recall whether Anthony was at her home on 7 March 2008 as he would come and go. She stated that on 10 March 2008, Anthony was admitted to Upton House, a psychiatric facility, due to paranoia.<sup>28</sup>
37. Anthony's father, Pranith Ngonvoraraj, stated "Anthony was not sleeping at our house on the 7<sup>th</sup> of March 2008 as there was an intervention order in place and his mother would remind him of this".<sup>29</sup> Pranith also stated "Anthony has addiction to drugs and has had many problems in the past. When he is addicted he has threatened me...he would threaten me with

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<sup>23</sup> Exhibit 15, pages 177-179.

<sup>24</sup> Exhibit 11.

<sup>25</sup> Exhibit 15, page 182.

<sup>26</sup> Exhibit 15, page 184

<sup>27</sup> Exhibit 7.

<sup>28</sup> Exhibit 15, pages 193-184.

<sup>29</sup> Exhibit 15, page 199.



a knife. In the past most of the arguments was about money. Last year he held a knife to my throat and after that we took him to the hospital”.<sup>30</sup>

38. An employee of the Eastern Health Adult Mental Health Service, stated he met Anthony in March 2007, when Anthony was a patient at Upton House Acute Psychiatric Inpatient Unit. The two would meet regularly, once or twice per week or at times daily, and Anthony would talk about life and mental health issues. Most of the meetings were informal and initiated by Anthony.<sup>31</sup>
39. In December 2007, this employee moved his office to Upton House. His and Anthony’s relationship became strained in June 2008 after the employee reported Anthony to the triage service with concerns for his mental health. From this time, the employee reports receiving a series of threatening and abusive calls and text messages which he believes were from Anthony. The employee obtained an interim intervention order against Anthony in October 2008. A few days later, the employee received 58 missed calls from a private number and a voicemail threatening to hurt him with a knife.<sup>32</sup> A fellow patient also took out an intervention order against Anthony in July 2008.<sup>33</sup>
40. On Saturday 8 March 2008, between 11.00am and 12.00pm, the employee received a call from Anthony, who told him he was hearing voices, was suicidal and wanted advice on how to be admitted into the psychiatric unit. The employee found this strange as Anthony was “very aware of the process and procedures necessary to ... be admitted to a psych unit due to his past history and intimate knowledge of the mental health system”.<sup>34</sup> The employee thought Anthony sounded nervous. The employee attended Upton House on 10 or 11 March 2008 and saw Anthony. The employee states Anthony told him he was “faking his symptoms to get admission to the ward and to help him get housing quicker”.<sup>35</sup>
41. Anthony was reported to have an interest in and possess a number of knives,<sup>36</sup> and allegedly had admitted to previously lighting fires,<sup>37</sup> and reportedly talked about torching cars.<sup>38</sup> A friend observed that Anthony “goes into hospital when he has done something wrong, such

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<sup>30</sup> Exhibit 15, page 200.

<sup>31</sup> Exhibit 15, page 207. The employee estimated that 60% of the times he met with Anthony, he appeared to be drug affected; 210. Anthony told the employee that he was a drug dealer; 211.

<sup>32</sup> Exhibit 15, page 208.

<sup>33</sup> Exhibit 15, page 222.

<sup>34</sup> Exhibit 12, pages 212-213. This was the first time in the twelve months they had known each other that Anthony had advised he was suicidal or hearing voices or sought admission-related advice.

<sup>35</sup> Exhibit 15, page 213.

<sup>36</sup> Exhibit 15, pages 214, 219, 223 and 225.

<sup>37</sup> Exhibit 15, page 214.

<sup>38</sup> Exhibit 15, pages 223 and 225.

as when he has serious charges coming up”.<sup>39</sup> He was also apparently observed to use public phone boxes even though he had a mobile telephone on him.<sup>40</sup>

42. Anthony’s older brother Bobby, stated he (Bobby) owned a green coloured 1994 Ford Fairmont sedan, which broke down in 2005. It was thereafter left in the driveway of his parent’s home. He thought that in around January 2008, his mother arranged for it to be towed to the wrecking yard.<sup>41</sup>

#### *Inspection of scene and vehicle*

43. Forensic Scientist Mr John Kelleher attended the scene and provided three statements in relation to his investigations.
44. James’ burnt vehicle was located parked facing west across the oval.<sup>42</sup> The fire was essentially confined to the interior, which sustained extensive damage.<sup>43</sup>
45. James’ vehicle was found with the doors closed, aside from the rear passenger door which was slightly ajar.<sup>44</sup> Mr Kelleher also noticed what appeared to be blood on paper beneath the front driver’s side door, and blood on the front driver’s side running board.<sup>45</sup> Examination of the vehicle’s window area indicated the front passenger window was open fully or nearly fully open, while the other windows were closed or nearly closed.<sup>46</sup>
46. Mr Kelleher observed a burnt trail between the passenger rear door and a plastic container located approximately five metres behind the rear of the vehicle was consistent with flammable liquid poured onto the roadway and ignited. He noted the roadway sloped down from the container to the car, but the pattern suggested a poured trail rather than liquid leaking from the bottle.<sup>47</sup>
47. The plastic container was found to be the melted remains of a Décor brand drink bottle, light blue-grey, labelled ‘Sport Décor’ with a probable 750 millilitre capacity. Petrol was detected on this item.<sup>48</sup>
48. Another item, a burnt and melted remains of a green drink bottle labelled (or inferred to be labelled) ‘Gatorade’ and ‘sports drink’ was located inside the vehicle<sup>49</sup> contained petrol.<sup>50</sup>

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<sup>39</sup> Exhibit 15, pages 220-221.

<sup>40</sup> Exhibit 15, pages 225-226.

<sup>41</sup> Exhibit 15, page 204.

<sup>42</sup> Exhibit 3; T @ pages 38-39.

<sup>43</sup> Exhibit 3; T @ page 39.

<sup>44</sup> Exhibit 3. Mr Kelleher explained that while the door was clearly ajar at the time of the fire, the position may have been changed in the course of extinguishing the fire, and at the time of the fire it may have been more widely opened.

<sup>45</sup> Exhibit 3.

<sup>46</sup> Exhibit 3; T @ page 40.

<sup>47</sup> Exhibit 3.

<sup>48</sup> Exhibit 3; Transcript (T) @ page 42.

Examination of debris from the passenger foot-wells could not exclude the possible presence of a volatile flammable liquid such as petrol at low levels.<sup>51</sup>

49. Mr Kelleher concluded the cause of the fire was ignition of combustible material in the passenger compartment, such as seats, seat-covers, trim, headlining and James' clothing. The spread of the fire was assisted by the presence of petrol on clothing, possibly on the seats, although there was insufficient remaining seat material on which to conduct tests. The source of ignition was not determined. There was no obvious source of accidental ignition in the vicinity but the vehicle's switches and controls would present possible ignition sources. However, given the presence of petrol and a trailer, Mr Kelleher concluded the fire was probably ignited by a match or cigarette lighter, possibly using burning paper or material to ignite the trailer.<sup>52</sup>
50. It was determined that the vehicle had been set alight from outside the vehicle with James' body still inside. James' severely burnt body was located across the front seats, with his head near the passenger window and his body across the centre of the vehicle. His feet were in the driver foot-well, and he was leaning to the side onto the passenger side seat, with his head almost touching the door. He was positioned beneath the handbrake, which was engaged. Mr Kelleher suggested James' position would apparently have required him to squeeze between the handbrake and the dashboard. The manner of this apparent unusual position was referred to the informant.<sup>53</sup>
51. Inspection of the vehicle did not identify evidence to indicate an engine fire or an electrical fault. The pattern of burning indicated the fire did not start in the speaker or cargo area.<sup>54</sup>
52. On 12 November 2008, Mr Kelleher was asked by Victoria Police to examine the knife located in situ in James' neck. Mr Kelleher was informed that a person of interest may have removed the knife's handle and put tape on the handle to assist with hiding fingerprints. Mr Kelleher was requested to examine the knife for traces of adhesive, and was asked whether the fire could have melted the knife handle.<sup>55</sup> Mr Kelleher confirmed in evidence he could not identify any residue of any material that might have been used to construct a handle, although remarked "[i]t was possible that there was adhesive remaining" due to the different

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<sup>49</sup> T @ page 52.

<sup>50</sup> Exhibit 3; Mr Kelleher said it was not possible to determine whether the petrol was on or in the bottle.

<sup>51</sup> Exhibit 3; T @ pages 41 and 43.

<sup>52</sup> Exhibit 3; T @ pages 43-44.

<sup>53</sup> Exhibit 3; T @ page 40, Exhibit 15, page 89.

<sup>54</sup> Exhibit 3; T @ 41.

<sup>55</sup> Exhibit 4.

colouration noted on the knife.<sup>56</sup> Mr Kelleher sent the knife to the chemical trace unit to see whether they could detect adhesive residue.<sup>57</sup>

53. Mr Kelleher also examined a swab labelled "Orlando Roccella".<sup>58</sup> Mr Kelleher was provided with a plastic swab stick holder open at the swab end. The swab was examined with respect to the possible presence of flammable liquid. None was present, which Mr Kelleher states may mean that it was never present, or that it was present but had evaporated to below detectable levels, given the container was open. Mr Kelleher states if the swab was collected in March 2008 (which it appears to have been) the prospect of any volatile flammable liquid (such as petrol or lighter fluid) residue surviving would be negligible.<sup>59</sup>

### *Outcomes*

54. In his summary in the inquest brief, DSC Hunt listed various persons of interest including Mr Scott O'Brien, Mr Simon Cupido, Mr Orlando Roccella and Mr Anthony Ngonvoraraj. DSC Hunt stated there is no substantive evidence to suggest these persons of interest were involved in James' death.
55. DSC Hunt confirmed via email on 30 June 2011 that at that time, there were a number of suspects, however no person had been charged in relation to James' death.
56. The State Government has issued a \$100,000 reward, but to date the case remains unsolved.<sup>60</sup>

## **JURISDICTION**

57. At the time of James' death, the *Coroners Act 1985 (Vic) (Old Act)* applied. From 1 November 2009, the *Coroners Act (2008) (Vic) (the Act)* has applied to the finalisation of investigations into deaths that occurred prior to its introduction.<sup>61</sup>
58. The role of the coronial system in Victoria involves the independent investigation of deaths to determine the cause of death, to contribute to the reduction of the number of preventable deaths and for the promotion of public health and safety and the administration of justice.

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<sup>56</sup> T @ page 53.

<sup>57</sup> T @ pages 53-54.

<sup>58</sup> Mr Kelleher said he did not know the source of the swab; T @ page 49.

<sup>59</sup> Exhibit 5; T @ page 47. Mr Kelleher said in evidence that the end could have been removed as this is standard procedure for swab taken to examine biological matter, where blood is dried out. Mr Kelleher said this is not appropriate for flammable liquids, and whoever took the swab may have misunderstood the way in which it should be used when testing for flammable liquid; T @ page 47-48.

<sup>60</sup> Exhibit 14, page 120. The financial reward was confirmed by Victoria Police as current in October 2015.

<sup>61</sup> The Act, section 119 and Schedule 1.

59. Section 67 of the Act sets out the statutory role of the Coroner in that a Coroner must find, if possible, the identity of the deceased, the cause of death and, in some cases, the circumstances in which the death occurred.
60. A Coroner may comment on any matter connected with the death and may also report to the Attorney-General and may make recommendations to any Minister, public statutory authority or entity, on any matter connected with the death, including recommendations relating to public health and safety or the administration of justice.<sup>62</sup>
61. As James was the victim of homicide, and in the absence of there being a criminal prosecution in relation to anyone charged in relation to the homicide, section 52 (2)(a) of the Act mandates that an Inquest is held into his death.
62. A Directions Hearing was held on 8 August 2012 in which I explained the purpose of the Inquest was to find, if possible, the circumstances surrounding James' death. I explained that whether that is successful will depend on the information that can be achieved through the calling of witnesses.<sup>63</sup>
63. Further Directions Hearings were held on 12 October 2012 and 4 December 2012.
64. By email dated 21 March 2013, Ms Robin Dyall on behalf of Mr Anthony Ngonvoraraj informed the court that her client will be objecting to giving evidence and intends on making an application under section 57 of the Act for a determination that he need not give evidence on the ground that the evidence may tend to prove that he has committed an offence against or arising under an Australian Law. As her client was overseas receiving drug rehabilitation treatment, Ms Dyall requested the application be dealt with prior to the Inquest.
65. I was provided with some material in support of Ms Dyall's application; indicating Mr Ngonvoraraj was out of the country, and participating in a detoxification and rehabilitation program for his opioid dependence at the time of the Inquest. Medical information was also provided about his then current state and his expected period of confinement (three to six months).
66. At the commencement of the Inquest, I raised this application with counsel acting on behalf of Mr Anthony Ngonvoraraj, Mr Holt of Counsel, and informed him I was prepared to excuse him from attending court to give evidence.<sup>64</sup>

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<sup>62</sup> Ibid, section 72(1) and (2).

<sup>63</sup> Transcript of Directions Hearing 8 August 2012, page 2.

<sup>64</sup> T @ page 4. I also informed Mr Holt that should his client's circumstances change, and prior to finalising the matter, I may return to assessing his fitness to attend court.

67. I was also provided with medical information concerning witness Ms Brianna Lugg to the effect that she was (at the time of the Inquest) incapacitated and not fit to attend court on medical grounds. I therefore excused Ms Lugg from attending court to give evidence.<sup>65</sup>

## **INQUEST**

68. An Inquest was conducted on 29 and 30 April and 1, 2 and 3 May 2013. Leading Senior Constable Amanda Maybury of the Police Coronial Support Unit acted as counsel assist.

### **Evidence at Inquest**

69. *Viva voce* evidence was obtained from the following witnesses at Inquest:<sup>66</sup>

- a. Mr Craig Russouw;
- b. Dr Michael Burke, Forensic Pathologist at the Victorian Institute of Forensic Medicine,
- c. Mr John Kelleher, Forensic Scientist, Victoria Police;
- d. Mr Shane Bartlett;
- e. Mr Michael Ngonvoraraj;
- f. Mr John Howard;
- g. Mr Robert Luongo;
- h. Mr Orlando Roccella;
- i. Mr Simon Cupido; and
- j. Coroner's Investigator, Detective Senior Constable Simon Hunt.

#### *Mr Craig Russouw*

70. Craig said his brother worked at times as a DJ and earned money playing poker. He was aware his brother bought and sold cannabis,<sup>67</sup> although believed James had not been

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<sup>65</sup> T @ page 4. I reserved the possibility of reassessing my position in the event Ms Lugg's circumstances changed.

<sup>66</sup> I note that at the commencement of 30 April 2013, the second day of the Inquest, after hearing *viva voce* evidence from Craig, Mr Kelleher, Shane and Michael, I explained that due to assurances from the Coroner's Investigator that the admissions from witnesses relating to the cannabis use (a portion of which were historic) were not of interest to the police, I had not individually cautioned the witnesses in relation to the potential for them to incriminate themselves. I provided Interested Parties with an opportunity to be heard on this point, and was assisted by comments made by counsel, highlighting the possible ramifications of handing witness statements to the media ; T @ pages 93-95. I indicated my intention to turn my mind to providing witnesses with retrospective certificates pursuant to section 57 of the Act. A section 57 certificate "Privilege in Respect of Self Incrimination in Other Proceedings" dated 30 April 2013 and certified under section 57 of the Act was issued in respect of Michael Ngonvoraraj. A section 57 certificate was issued in respect of Orlando Roccella in the same terms.

<sup>67</sup> T @ pages 10-11.

involved in selling cannabis for approximately six months prior to his death.<sup>68</sup> Craig stated “I would say most of his friend group did smoke cannabis”.<sup>69</sup> Craig had seen some cash in his brother’s room, but did not know how much or where it came from.<sup>70</sup> Craig was aware his brother used his phones for buying or selling cannabis,<sup>71</sup> and had seen some in his room.<sup>72</sup>

71. Craig confirmed that the conversation he overheard on 7 March 2008 in which James said something akin to “You’ve got something. Cool”, was the first he had heard of James dealing for approximately six month break.<sup>73</sup> Craig told James he found it odd that Henry called (the second call he overheard) on the very day James was to pick something up for the first time in a long time. James responded that it would be explainable by Simon (Cupido) having told Henry that James was picking some cannabis up. Craig told James he should call Simon to check and Simon told James he had not spoken to Henry.<sup>74</sup> Craig was not aware of any contact between James and Simon between the two telephone calls.
72. Craig said he knew Michael and Anthony Ngonvoraraj, as their family previously lived close to his. He said James knew Michael, and added “I had no idea that he knew Anthony”.<sup>75</sup> Craig said “he [James] was spending a lot of time with Orlando, I guess, in sort of like the period leading up to his death. But he spent a lot of time with a lot of his friends.”<sup>76</sup>

*Dr Michael Burke*

73. Dr Burke explained his report, comment number 3, “There was no evidence of soot within the airway” to mean there was no evidence James was breathing at the time of the fire.<sup>77</sup> Dr Burke described the knife injuries to the vasculature identified as “lethal injuries”.<sup>78</sup> He said that as the carotid artery supplies the vast majority of the blood to the brain, a loss of blood will make someone lose consciousness very quickly.”<sup>79</sup>
74. When asked about the position of James’ body in the burnt vehicle, Dr Burke said “I remember thinking it was odd. And to this point now, if you ask me why...his body was in

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<sup>68</sup> T @ page 16.

<sup>69</sup> T @ page 11.

<sup>70</sup> T @ page 11.

<sup>71</sup> T @ page 12.

<sup>72</sup> T @ page 15.

<sup>73</sup> T @ pages 18-19.

<sup>74</sup> Exhibit 1 and T @ page 154. Simon apparently told James however that Henry was ‘alright’.

<sup>75</sup> T @ pages 13-14. Craig considered he met Michael through a mutual friend; T @ page 20. He also confirmed he did not know Scott O’Brien.

<sup>76</sup> T @ page 22.

<sup>77</sup> T @ pages 27-28.

<sup>78</sup> T @ page 29.

<sup>79</sup> T @ page 29.

that position, I still don't know. But I thought it was a bit odd."<sup>80</sup> He said that "intuitively it just looked an unusual position to be in, and it didn't appear that someone would have just collapsed after injury or natural disease...and be in that position."<sup>81</sup> Dr Burke said he expected with the nature of the stab injury for James to have lost consciousness very quickly, and collapse. He said to collapse and then end up under the handbrake would be unexpected, that "[i]t would suggest someone has moved his body, I would have thought."<sup>82</sup> Dr Burke said "[b]ut I can't explain how he got there, other than someone put him there. And why they would move him in that exact position, I don't know."<sup>83</sup> Dr Burke explained he is not a crime scene examiner. He was however asked, with his knowledge of how the body bleeds with these wound types, whether he would expect blood to travel outside the car [had James been stabbed whilst inside the car]. Dr Burke answered in the negative, and said "[i]t suggests he's outside the car. If it was his blood, it would suggest he's outside the car, I would have thought. If his blood is outside the car."<sup>84</sup>

75. Dr Burke noted the knife blade was said to be 25 centimetres long.<sup>85</sup> He was able to speak on the knife's path but noted there are many scenarios as to how the injury could have occurred, and did not know based on the forensic evidence whether the stab injury occurred inside or outside the car.<sup>86</sup>

*Mr John Kelleher*

76. Mr Kelleher opined the knife handle had been removed prior to the fire, as there was nothing to attach it to due to the removal of the tang.<sup>87</sup> He said there may have been a makeshift handle fitted to the blade.<sup>88</sup>
77. Mr Kelleher agreed with Dr Burke that James' position in between the handbrake and the dashboard did not reflect him having simply fallen sideways from a sitting position. He said

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<sup>80</sup> T @ page 29.

<sup>81</sup> T @ page 30.

<sup>82</sup> T @ page 30.

<sup>83</sup> T @ page 30.

<sup>84</sup> T @ page 31.

<sup>85</sup> T @ page 33.

<sup>86</sup> He said "...it's going slightly backwards and slightly upwards. So it doesn't suggest someone doing a downward motion. It certainly doesn't suggest that. But someone could be - if the knife is in someone's right hand, it could go straight across. You could have it in your left hand and go with a back hand. Someone could be in front, behind. All - I can tell you where the knife is situated, especially seeing the knife was still there...[b]ut the position of the people, I certainly can't say. What I can say, it's certainly not downward..."; T pages 33-34. Dr Burke later remarked the common thing seen in people who are face to face are downward knife injuries; T @ page 36.

<sup>87</sup> Mr Kelleher explained a tang is a steel spike that is part of the blade which projects into the knife's handle. He compared a purchased Wiltshire Stay Sharp knife, the same one used in the incident, with the relevant knife. He found the purchased knife had quite a substantial tang, and projected six or seven centimetres into the handle; T @ pages 52, 54. He said it would not have been possible to fit a handle on the end of the knife, on the end of the blade, because there was no tang; T @ page 54.

<sup>88</sup> T @ page 54.



“If you fell sideways, you would fall over the handbrake, not under the handbrake...[a]nd it – I thought that the body may have been moved, and that’s what I was drawing to the informant’s attention.”<sup>89</sup>

78. Mr Kelleher gave evidence it would probably take a matter of (maybe five) minutes for the majority of vehicles’ interior to be fully involved in a fire if lit from inside the vehicle.<sup>90</sup> He said the petrol trailer would have taken approximately one to two seconds to travel to the vehicle once lit.<sup>91</sup>
79. Mr Kelleher said in evidence that he presumed the trailer had been used to allow the fire to be lit from a safe distance, that there is some risk to the person lighting the fire when flammable liquid is used in any significant quantities.<sup>92</sup>
80. Mr Kelleher gave evidence if an item (or part thereof) has burnt, any blood, fingerprints or DNA on the burnt part will have also burnt, effectively destroying potential evidence.<sup>93</sup>
81. Mr Kelleher found most of the knife’s tang had been removed and there were several distinct cuts, concluding that if something else had been used in place of a handle, it would have had to have been wrapped around part of the blade. Mr Kelleher said that he could not find any residue of any material that might have been used.<sup>94</sup> He opined that the handle had been removed prior to the fire.<sup>95</sup>

*Mr Shane Bartlett*

82. Shane said in evidence that he knows a reasonable amount about cars due to his interest and occupation as an auto-dismantler.<sup>96</sup> Shane confirmed the car he saw was an EB or EL Ford Falcon Sports-pack sedan GLi model<sup>97</sup> in good condition and was “British racing green” in

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<sup>89</sup> T @ page 56. Mr Kelleher clarified the handbrake is in the middle of the console in the vehicle.

<sup>90</sup> T @ pages 49-50.

<sup>91</sup> T @ page 51.

<sup>92</sup> T @ pages 50-51.

<sup>93</sup> T @ page 51.

<sup>94</sup> Mr Kelleher said there was no timber remaining if a wooden handle had been used, no plastic from a plastic handle and no remnants of tape. He said it was possible that there was adhesive remaining, due to the different colouration he noted on the knife; T @ page 53. He said he sent it to the chemical trace unit to determine whether they could detect any adhesive residue, but they did not provide him with a result; T @ pages 53-54.

<sup>95</sup> T @ page 54.

<sup>96</sup> T @ page 59.

<sup>97</sup> T @ page 62-66, Exhibit 6. Shane explained a sports pack means “it comes with all the bells and whistles. It has got all the skirts, a more upgraded headlight system on it. At the time I was interested in finding a boot spoiler that would suit my car, so I was looking at all different types, so, therefore, it attracted my attention there was a boot spoiler on the back of it”; T @ page 60. He later said it had chrome detail; T @ page 65.

colour<sup>98</sup> and confirmed his original statement that there was possibly a P plate on the windscreen.<sup>99</sup>

83. Shane said that James' vehicle "exploded not long after the car went past me"<sup>100</sup> and that he originally thought it was "just kids burning a car out".<sup>101</sup> He was travelling towards the fire, and heard a voice but could not see anyone, nor could he tell the directions from which the voice came.<sup>102</sup> Shane decided to leave the Reserve, and saw a security guard and informed him of the fire, heard sirens and left.<sup>103</sup>

*Mr Michael Ngonvoraraj*

84. Michael said in evidence he and James were good friends,<sup>104</sup> and that he used to purchase cannabis from James in cash transactions.<sup>105</sup> He would arrange for the purchases over the telephone.<sup>106</sup> There was no designated meeting place for these transactions, and could occur at Michael's home or in James' area. Michael said they never met in public places like car parks.<sup>107</sup>
85. Michael said in evidence that James and his brother Anthony "barely knew each other" and their only connection was through him.<sup>108</sup> He said Anthony used drugs himself, but did not think he had ever purchased drugs from James.<sup>109</sup>
86. Michael said Anthony was not a part of his birthday celebrations on 6 March 2008,<sup>110</sup> and to his knowledge, Anthony was at their parents' house on Friday 7 March 2008 waiting to be checked into Upton House. He said Anthony had been suffering psychosis probably over the six months prior. Michael said Anthony "was always in and out, sort of getting checked up. I think a few times he had [a voluntary admission]".<sup>111</sup> Michael confirmed he did not see Anthony on 7 March 2008.<sup>112</sup> He recalled informing Anthony of James' death when Anthony was in Upton House.<sup>113</sup>

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<sup>98</sup> T @ page 60.

<sup>99</sup> T @ page 60. In his statement, Shane said there was "90 per cent" chance of this; Exhibit 6. Upon further questioning, Shane was prepared to put this higher than 90 per cent; T @ page 62.

<sup>100</sup> T @ Page 67.

<sup>101</sup> T @ page 60.

<sup>102</sup> T @ page 68.

<sup>103</sup> T @ page 68=69.

<sup>104</sup> Michael later explained he last recalled seeing James approximately 12 months prior to his death; T @ page 85.

<sup>105</sup> T @ page 73-74.

<sup>106</sup> T @ page 74.

<sup>107</sup> T @ page 74.

<sup>108</sup> T @ page 75.

<sup>109</sup> T @ page 75.

<sup>110</sup> T @ page 75.

<sup>111</sup> T @ page 76.

<sup>112</sup> T @ page 76. Michael said he thought Anthony was at or on his way to Upton House on 7 March 2008; T @ pages 82, 87. Michael however stated "I couldn't specify times, dates, seconds, because it's not my life"; T @ page 87.

<sup>113</sup> T @ page 83. Michael said Anthony had called him from Upton House to tell him he was there.

87. Michael said he recalled that when Anthony was around three or four years old, they had lit a fire in their neighbour's yard.<sup>114</sup> He confirmed Anthony took martial arts lessons.<sup>115</sup> He recalled visiting his brother in "lock up" (jail) in Castlemaine. He was unsure of the exact charges against him, but said "I know he has had trouble with the law".<sup>116</sup>
88. Michael confirmed his older brother Bobby owned a Ford Falcon, probably an EL model, but believed it was blue. He did not know if the vehicle had a rear spoiler.<sup>117</sup> He said it had blown a head gasket and was sitting in his mother's driveway for approximately two years.<sup>118</sup> When asked whether the car was in his parents' driveway around the time of James' death, Michael said it was "probably was around that time, probably a good year or two prior to that as well."<sup>119</sup> Michael said it was "impossible" for anyone to have been driving that car at that time.<sup>120</sup> He later said "I'm pretty sure that that car hadn't moved for years. I can recall a fair few times that people had tried to come around and fix it, and it couldn't be fixed."<sup>121</sup>
89. At the time of James' death, Michael lived near Burwood Reserve, just over the road on Burwood Highway,<sup>122</sup> and to his knowledge, Anthony lived in his own residence in Bulleen, but said there could have been a time when Anthony was living in a bungalow/garage at his parent's home, but could not say when.<sup>123</sup>
90. Michael said he did not know Scott O'Brien.<sup>124</sup>

*Mr John Howard*

91. John said Scott O'Brien attended his home on the evening of 7 March 2008 and seemed "fine".<sup>125</sup> John estimated Scott attended approximately after 10.00pm, and stayed for a period of time between 47 minutes and two hours.<sup>126</sup>
92. John confirmed he thought Scott was driving his Ford XR6 with a red stripe and an after market custom 'Tickford' wheel modification. He said it had been lowered and it might

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<sup>114</sup> T @ page 77.

<sup>115</sup> T @ page 77.

<sup>116</sup> T @ page 79. Mr Holt on behalf of Anthony at that point raised this as an issue, and clarified Anthony had never been sentenced to a term of imprisonment for any offence; T @ page 80.

<sup>117</sup> T @ page 81.

<sup>118</sup> T @ page 80.

<sup>119</sup> T @ page 81.

<sup>120</sup> T @ page 81.

<sup>121</sup> T @ Page 82.

<sup>122</sup> T @ page 78.

<sup>123</sup> T @ page 82. He later said Anthony was staying at his parent's home prior to his admission to Upton House; T @ page 84.

<sup>124</sup> T @ page 82.

<sup>125</sup> T @ page 97.

<sup>126</sup> T @ page 98. John however said he "was only fairly vague with the times, in that I can't remember to be specific"; T @ page 98.

have had a different (custom) front on it, but was not certain. He said "...[a]nd, look, I mean, I suppose, it's easier to say that I assumed that he was in that car but it looked like that one – it was just a generally cleaner car in appearance. And, I mean, I didn't go over it with a fine tooth comb but it did appear to be that particular one".<sup>127</sup> Mr Howard said he was not absolutely certain it was that car. He said that was the car Scott generally drove when he attended his home, but conceded "they [Scott and his wife] did swap the vehicles around a little bit".<sup>128</sup> He said "I can't be certain that it was that one but I'm pretty sure it was the one with the red stripe".<sup>129</sup> He said "I think he might have had an accident in one of them, that's when he replaced it with the maroon Mitsubishi".<sup>130</sup> He could not recall when Scott told him the accident occurred.<sup>131</sup>

93. John confirmed that not long after that,<sup>132</sup> Mr O'Brien attended his home in that vehicle (the one with the 'Tickford' wheels, and he noticed the red striping appeared to have been painted over. He said he noticed this as "it was the one bright feature on the car."<sup>133</sup>

94. John said he did not notice P plates on the vehicle, and thought Scott was a fully licensed driver.<sup>134</sup>

*Mr Orlando Roccella*<sup>135</sup>

95. Orlando said he was not aware of James arranging to meet anyone prior to driving to Rob's house,<sup>136</sup> nor did James indicate that he was going to attempt to purchase cannabis.<sup>137</sup>

96. Orlando said he considered there is a risk in 'dealing' with people that you don't know.<sup>138</sup> He said he was not familiar with "too many of his [James'] customers. He always sort of

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<sup>127</sup> T @ page 99. John then explained "[t]here was one that was similar but had different wheels. It was in poorer condition, it had a lot of stickers on it; whereas the other car didn't, it was basically just the stripe"; T @ page 99. John later conceded he was not certain which car the stickers were on; T @ pages 107-108, but later said "I still maintain the stickers were on the older car that didn't have the stripes"; T @ page 110.

<sup>128</sup> T @ page 102. "They" meaning Scott and his partner/wife; T @ page 107.

<sup>129</sup> T @ page 102.

<sup>130</sup> T @ page 100.

<sup>131</sup> T @ page 100. I note the lack of this information regarding the red stripe in Shane Bartlett's statement or viva voce evidence, even though it appears that this detail obtained from Shane is what inspired the Crime Stoppers press release (Exhibit 12); T @ pages 111-113.

<sup>132</sup> John clarified it was probably a few months after James' death; T @ page 102.

<sup>133</sup> T @ pages 100-101. John then said that it could have been the other car with the wheels swapped over, but he did not look that closely, and was not familiar with their registrations; T @ page 101. John said he didn't think anything of it at the time, but then read something in the news (a Crime Stoppers advertisement; T @ page 103) that referred to a car with a stripe possibly having been seen at Burwood Reserve around the time of James' death; T @ page 102.

<sup>134</sup> T @ pages 99-100.

<sup>135</sup> Prior to his giving evidence, I addressed Orlando on his right to object to giving evidence that might incriminate himself in relation to a criminal offence and the process of making an application for a certificate pursuant to section 57 of the Act. I subsequently determined to grant Orlando a certificate; T @ pages 129-130.

<sup>136</sup> T @ page 131.

<sup>137</sup> T @ page 132.

<sup>138</sup> T @ page 133.

kept it to himself”.<sup>139</sup> Orlando said he thought James might have been trying to purchase some cannabis on 7 March 2008, as James had been looking for cannabis at the time and had previously dealt in it.<sup>140</sup> Orlando confirmed he considered James was fairly cavalier about the way he kept cannabis in the back seat of his car, and believed James was dealing in cash.<sup>141</sup>

97. Orlando confirmed he called James on his mobile telephone at 10.43pm on 7 March 2008, and James said he would call him back for directions as he neared their destination.<sup>142</sup> Orlando said James did not say anything that would have led him to believe he was doing anything other than coming straight to Rob’s house.<sup>143</sup> Orlando agreed that the plan to go to Rob’s house was fluid, as he too went and did some other business without informing James.<sup>144</sup>
98. Orlando said just after that call, he spoke to a friend “Davey”, and would have been approximately at the Burwood Kmart, near the KFC where Orlando did one of his deals that night.<sup>145</sup> Orlando had sold cannabis to Simon (Cupido) earlier that evening, between 8.00 and 10.00pm.<sup>146</sup>
99. Orlando said he knew basically who the other dealers in the area were, “most of the other, I sort of knew as friends...”.<sup>147</sup> He said “[b]ecause it was such a small-time sort of thing, it was like a group of friends thing, there wasn’t, you know, treading on areas like, you know, you see in the movies and things like that. It wasn’t like that”.<sup>148</sup> Orlando did not think there were any conflicts regarding customers, suppliers or anything of the like between James and

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<sup>139</sup> T @ page 136.

<sup>140</sup> Exhibit 10, T @ page 139. Orlando explained he knew James was looking for it, as it had been a dry season, and it was difficult to find cannabis at the time (T @ pages 139-140) in their local area (T @ page 149). Orlando did not think James dealt in his area (Vermont South), but generally more in James’ local area of Burwood; T @ page 149.

<sup>141</sup> T @ page 133.

<sup>142</sup> Exhibit 10; T @ page 137. Orlando could not recall if he asked where James was at the time of this call; T @ page 142.

<sup>143</sup> T @ page 137. Mr Holt on behalf of Anthony Ngonvoraraj addressed Orlando about his answers to police questioning the day after James’ death, specifically that he thought James had told him that he was travelling to Rob’s via Canterbury Road, and that this would have been a logical route for James to travel; T @ page 144; Record of interview of Orlando Roccella held 9 March 2008; Exhibit 14, page 33, question 228. Police determined that James was at the a service centre at the corner of Rooks Road and Canterbury Road at 10.53pm, which would also make sense as although it is a bit past Vermont [I consider this meant past their destination in Vermont, Rob’s house], it is in the right area if one was trying to get petrol; T @ page 148. Mr Holt pointed out that during the police interview, Orlando had stated that at the time of the 10.43pm call to James, Orlando had been “[w]here Kmart Burwood is, that’s like roughly half”; T @ page 145, Exhibit 14, page 34, question 294.

<sup>144</sup> T @ page 155.

<sup>145</sup> T @ page 149. The other deal involving “Davey” occurred at the horticultural centre in Vermont South.

<sup>146</sup> Exhibit 10; T @ page 150-151.

<sup>147</sup> T @ page 150.

<sup>148</sup> T @ page 150.

Simon.<sup>149</sup> He agreed that James must have been in deeper than he thought, dealing larger amounts of cannabis.<sup>150</sup>

100. Orlando said that at 11.43pm on 7 March 2008, both of James' mobile telephones were switched off.<sup>151</sup> He said this did not strike him as unusual and thought James did not want to come to Rob's house.<sup>152</sup>
101. Orlando said he departed Rob's house at 1.58am on 8 March 2008 when he received a mobile telephone call from Simon. Orlando explained this was an unusual occurrence "[b]ecause he never really rang me up to, you know, to just have a random chat. So it was unusual to me".<sup>153</sup> Orlando recalls his conversation with Simon was brief, that Simon inquired as to what he was doing, and that James was not mentioned.<sup>154</sup> He next saw Simon at James' parents' house the following day, after news travelled about what had happened to James. He observed Simon to be very upset, crying.<sup>155</sup>
102. Orlando said he had never attended Burwood Reserve with James.<sup>156</sup> He did not know who it might have been that James was going to meet.<sup>157</sup> He said James had never mentioned Anthony (Ngonvoraraj),<sup>158</sup> and he himself had not met Anthony until after James' death.<sup>159</sup>
103. Orlando shared the opinions of Simon in that they considered James would not do a deal that involved a large amount of money if he did not know and trust the person, as he was pretty careful, and that James did not have an enemy and had never ripped anyone off.<sup>160</sup>
104. Orlando was not familiar with a person by the name of 'Henry'.<sup>161</sup>

#### *Mr Simon Cupido*

105. After his conversation with James at 8.37pm on 7 March 2008, Simon again spoke with James via mobile telephone at 9.15pm. He relayed the essence of this conversation to be "What are you doing? Are you going to get some weed later or are we catching up?". James

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<sup>149</sup> T @ page 150. Orlando however recalls James warning him not to associate with Simon to much as he could be a little bit of a "loose cannon". Orlando however did not see that side of Simon; T @ page 151.

<sup>150</sup> T @ page 157.

<sup>151</sup> Exhibit 10.

<sup>152</sup> T @ page 138.

<sup>153</sup> T @ page 138.

<sup>154</sup> T @ page 138. Orlando explained his connection to Simon was through James; T @ page 139.

<sup>155</sup> T @ page 139.

<sup>156</sup> T @ page 139.

<sup>157</sup> T @ page 141.

<sup>158</sup> T @ page 141.

<sup>159</sup> T @ page 152.

<sup>160</sup> T @ pages 142-143; Exhibit 15.

<sup>161</sup> T @ pages 155-156.

apparently informed Simon that he was still waiting. Although Simon knew James intended on obtaining cannabis that evening, he was unaware of any further details.<sup>162</sup>

106. Simon could not recall the specifics of his conversation with Orlando close to 2.00am on 8 March 2008, he considered he would have asked Orlando if he was with James, as he could not get hold of James.<sup>163</sup>
107. Simon confirmed he knew James would buy and sell cannabis.<sup>164</sup> He said that James would purchase in pounds at the value of \$2,700 per pound and said “[m]aybe he was getting a few of those at the time”.<sup>165</sup> When asked about his knowledge of how James carried his cash, he said “[h]e just carried it on him...I don’t know if you guys know, but at the time he had a lot of cash in his cupboard or something like that at the time of his death. But he pretty much just carried it on him...I don’t think there was a big worry about what happened, happening.”<sup>166</sup>
108. Simon did not know if James’ possession of large amounts of cash was well known, but that “I’m sure certain people would have known that...there was...large amounts of cash being involved, but they would have only been people that were picking up large amounts off him”.<sup>167</sup>
109. When asked if he knew where James kept his cannabis, Simon said “most of the time in the back of his car”.<sup>168</sup> Simon said he never met any of the dealers from which James obtained large amounts of cannabis.<sup>169</sup>
110. When asked to comment on evidence that James would mostly sell cannabis among his friends, Simon said “sort of. But then friends keep going down the line, and then friends become friends of friends...”.<sup>170</sup> Simon confirmed in evidence that he was not surprised James attended the oval after dark as long as he knew and trusted the person who he was meeting.<sup>171</sup>
111. Simon said in evidence that he knew a person, apparently of Samoan descent, named ‘Henry’, having met him through friends towards the end of high school.<sup>172</sup> Simon said he had not seen Henry for a couple of years, but spoke to him over the telephone a couple of

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<sup>162</sup> T @ pages 172.

<sup>163</sup> T @ page 173.

<sup>164</sup> T @ page 167.

<sup>165</sup> T @ page 168.

<sup>166</sup> T @ page 168.

<sup>167</sup> T @ page 169.

<sup>168</sup> T @ page 168.

<sup>169</sup> T @ page 168.

<sup>170</sup> T @ page 169.

<sup>171</sup> T @ pages 179-180.

<sup>172</sup> T @ page 163.

months prior to the Inquest. He said Henry used to sell cannabis “back then”.<sup>173</sup> He recalled “James might have met him for weed. I’m sure they did, you know, once or twice, maybe I was there or I had arranged it or something like that. But as far as the details of the times when they met...I couldn’t really be precise.”<sup>174</sup>

112. Simon said in evidence he knew Michael and Anthony (Ngonvoraraj), but did not know Scott O’Brien.<sup>175</sup> He confirmed James and Anthony knew each other, that they got along “fine” and that Anthony owed James a small amount of money (approximately \$15.00) at the time of his death.<sup>176</sup> Simon expressed negative feelings towards Anthony, but conceded that anything he had heard about Anthony’s possible involvement was mere speculation.<sup>177</sup>
113. Simon said in evidence that he thought that at the time of James’ death, he may have known two people who had a Ford – possibly Henry and Anthony’s older brother.<sup>178</sup>
114. Simon is familiar with Burwood Reserve, having played cricket there, but had never attended the Reserve with James.<sup>179</sup>
115. Simon said he sold cannabis himself at some point.<sup>180</sup>

*DSC Simon Hunt*<sup>181</sup>

116. DSC Hunt of the Homicide Squad did not make a statement in relation to this investigation.<sup>182</sup>
117. DSC Hunt stated in evidence that it appears five pieces of information have been released by the Victoria Police in the media release that was produced to the Court upon his oral evidence (Exhibit 12). DSC Hunt confirmed the red stripe on the photo of the car was

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<sup>173</sup> T @ page 164.

<sup>174</sup> T @ page 164. When asked about Craig’s concern for his brother upon receiving a phone call from Henry on 7 March 2008, Simon stated “I think his brother is clutching at straws there...he’s [Henry] not the type of person to do something like this. He is a Christian, he goes to church every Sunday. He’s got kids, he’s got a family. I think – I think maybe Craig would have said something – well, actually, I think back in the day when Craig was at high school, those two may have had, like, a – not an altercation. Or Henry may have taken something off Craig or something like that, and was probably weed”; T @ pages 164-165.

<sup>175</sup> T @ page 173.

<sup>176</sup> T @ page 174.

<sup>177</sup> T @ page 177.

<sup>178</sup> T @ page 182-183. Simon was unsure if Henry’s was green.

<sup>179</sup> T @ page 178.

<sup>180</sup> T @ 169; I note I warned Simon at this point regarding his evidence and explained his right to refuse to give evidence or apply for a certificate pursuant to section 57 of the Act, to which Simon said “No, that’s fine”; T@170.

<sup>181</sup> DSC Hunt explained his involvement in this matter commenced upon his starting temporary duties at the homicide squad on 25 March 2008. He remained involved in the matter until June 2008 when he left the homicide squad. He later returned to the homicide squad approximately 12 months later, and again became involved in making inquiries. In approximately May 2010, the lead investigator, left their office and DSC Hunt took over the investigation; T @ page 186.

<sup>182</sup> T @ page 186.



included in the media release based on the information provided by Shane Bartlett to Victoria Police.<sup>183</sup>

118. DSC Hunt clarified some issues in relation to Mr Kelleher's evidence regarding the three swabs obtained and provided to him to examine. DSC Hunt considered the three swabs were taken from Orlando's car's steering wheel, and then packaged and labelled differently. DSC Hunt confirmed that no results were obtained, and the ability to obtain results was impacted as the packaging was not appropriate, as explained by Mr Kelleher.<sup>184</sup>
119. DSC Hunt said the only print lifted from the scene was a palm print that was obtained from the décor drink bottle. Despite it being quite distorted, he was hopeful they would identify a match. The palm print was run through the fingerprint database and yielded no results. He said "we also passed onto the fingerprint branch various persons of interest throughout the investigation to physically match and see if there's any match, and there hasn't been."<sup>185</sup>
120. In relation to blood located on paper beneath the front driver's side door, DSC Hunt confirmed that was a positive match to James' DNA. DSC Hunt confirmed the other blood located was also a positive match to James' DNA, and that there was no blood or other fluid match to any other person at the scene.<sup>186</sup>
121. DSC Hunt said that attempts were made to ascertain the height of the person who was seen on CCTV to access the public telephone at the Kmart complex, however it was determined that such estimations would not be accurate. He also said the build of the person viewed in the footage would be hard to comment upon, given the person was wearing a heavy jacket and had a backpack on.<sup>187</sup> He said in his opinion, the footage was too unclear to be able to exclude any of the persons of interest.<sup>188</sup> He said the footage from the basketball stadium was not of a quality that would enable an inference that it was the same person as viewed in the Kmart complex CCTV footage.<sup>189</sup>

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<sup>183</sup> T @ page 187. DSC Hunt later explained "Mr Bartlett obviously made the statement. He mentioned in his statement about a sports pack. I know on one occasion I went back and spoke to him to elaborate on that, and I think that's when the red stripe came about...I don't even think Mr O'Brien was in the equation when Mr Bartlett was initially spoken to about the car."; T @ page 199.

<sup>184</sup> T @ page 188.

<sup>185</sup> T @ pages 188-189. DSC Hunt highlighted that despite a search of James' house, police were not able to obtain a palm print for James, which was also not able to be obtained from his body. DSC Hunt therefore stated they have not been able to eliminate that the print may well be that of James'. Mr Sullivan of Counsel on behalf of Mr O'Brien confirmed that the palm prints did not match those of his client; T @ page 195 and Mr Dempsey, filling in for Mr Holt, similarly confirmed that the palm prints did not match those of his client; T @ 197.

<sup>186</sup> T @ page 189.

<sup>187</sup> T @ page 196. DSC Hunt later said "...the facial features were certainly slim..." but repeated body build was hard to determine; T @ page 202.

<sup>188</sup> T @ page 201.

<sup>189</sup> T @ pages 196-197.

122. DSC Hunt confirmed this matter remains an open police investigation and that there had not at that point been anything heard in evidence that would prompt him to follow up with any further inquiries.<sup>190</sup>
123. DSC Hunt said [of people of interest] "...I think there was five people...I would suggest there is probably two remaining that we haven't been able to eliminate, and that's Mr O'Brien and Mr [Anthony] Ngonvoraraj."<sup>191</sup>
124. DSC Hunt said "So I think what surprises me, I guess, is – and it comes from what Simon Cupido said, you, he had to trust someone. So I've always had the opinion that perhaps the person that was in the car with him entering that basketball stadium car park, you know, would have had to have been someone he trusted and was close to. So we've always had that thought that someone close to James was obviously there and knows more."<sup>192</sup>
125. DSC Hunt was asked whether any further investigations proceeded as a result of Simon's associate's statement (referred to in above paragraphs 30 and 31), which appeared fairly pointed in his accusations against Simon. DSC Hunt said he was not involved in that avenue of inquiry, but his understanding is Simon and his associate had a falling out, and there were concerns the associate might have been motivated by the reward on offer.<sup>193</sup>
126. DSC Hunt confirmed the \$100,000 reward is still open. I suggested it might be timely to make a further announcement about it.<sup>194</sup>

### **Oral Submissions at the conclusion of *viva voce* evidence**

127. LSC Maybury read out a letter written by James' family and friends, who chose not to attend court on the final day of the Inquest. The letter highlighted James' positive aspects, his activities and his enduring character traits. It noted James was a popular, soft-spoken, gentle person with a lovely nature and a passion and talent for music. He was generous, kind, and focused on those around him. He achieved his dream of becoming an audio engineer, and was among the first group of individuals to be awarded a degree in audio engineering and sound production in Victoria. He was a talented poker player, and attained an income for his efforts. I thank James' family and friends for their letter in this regard.

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<sup>190</sup> T @ pages 198-199.

<sup>191</sup> T @ page 201.

<sup>192</sup> T @ page 203.

<sup>193</sup> T @ page 204. DSC Hunt also noted police obtained the statement from Simon the day after James' death, on the basis of phone records, and the associate made his statement sometime in 2009; T @ page 204. He said none of the associate's statement has been put to Simon; T @ pages 204-205.

<sup>194</sup> T @ page 205. I am informed that a newspaper article was published on 15 May 2013.

128. James' family voiced their concerns that the person or people who did this to James present a real danger to the wellbeing of our society. I agree with this. I, like James' family would find comfort in those responsible for his homicide being brought to justice.
129. LSC Maybury submitted that on the basis of the evidence,<sup>195</sup> it is open to me to find, on the balance of probabilities, the circumstances that are likely to have resulted in James being at the East Burwood Reserve on Friday, 7 March 2008, and that these circumstances ultimately led to his death. That is, James drove his vehicle and collected a person known to and trusted by James, with the intention of conducting a drug-related transaction. LSC Maybury submitted it is open to me to find that this homicide was a planned event by two or more people. LSC Maybury submitted that on the balance of probabilities, there had not been sufficiently compelling evidence to support a finding in which an identifiable person can be said to have caused or contributed to James' death.<sup>196</sup>
130. LSC Maybury submitted however that no person of interest can be eliminated on the basis of the evidence, and as such it remains an open and unsolved homicide.
131. Mr Terrence Sullivan of Counsel on behalf of Scott O'Brien and Mr Dempsey of Counsel<sup>197</sup> on behalf of Mr Anthony Ngonvoraraj agreed with LSC Maybury's submissions and did not add anything further.<sup>198</sup>
132. I indicated at the conclusion of submissions that I agreed with the basic thrust of LSC Maybury's submissions, and that I did not require counsel to return for the handing down of my findings.<sup>199</sup>
133. I indicated, in relation to my statutory role, that the identity of the deceased was no longer in dispute and I find it is James John Russouw, the medical cause of death would be consistent with my acceptance and adoption of Dr Burke's opinion, that James died from a stab injury to the neck.
134. I agreed with counsel's submissions that there is not much more that I can advance from the written material, having heard from witnesses, and agreed that it remains an unsolved and open homicide, to the extent that I cannot on the totality of the evidence identify who caused James' death. Although many of James' friends and associates knew of his cannabis-related

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<sup>195</sup> LSC Maybury explained the evidence she was referring to included James' lifestyle, involvement in drug dealing, the way in which he was known to conduct his business, the CCTV footage, telephone records, testimony of friends and family who interacted with James on 7 March 2008, the forensic evidence from the crime scene and independent witness testimony: T @ pages 3-4.

<sup>196</sup> T @ page 3.

<sup>197</sup> Mr Dempsey filled in for Mr Holt on 3<sup>rd</sup> and 4<sup>th</sup> day of hearing, 1 and 2 May 2013.

<sup>198</sup> T @ page 4.

<sup>199</sup> T @ page 4.

activities, no one seemed to know who James purchased cannabis from, as there seemed to be a culture that such things were not spoken about.<sup>200</sup>

135. I indicated there is nothing I had heard that would lead me to deviate from the persons who remain of interest to police. I indicated that if any further evidence should come to light, as it is an open finding in a homicide, the matter can be re-opened at a later stage.<sup>201</sup>

136. On 9 November 2015, I delivered the following findings:

- a. I find that the identity of the deceased is James John Russouw.
- b. I find that Mr Russouw died from a stab injury to the neck.
- c. I find on the balance of probabilities that on 7 March 2008, James drove his vehicle and collected a person most likely known to and trusted by him, with the intention of conducting a drug-related transaction at the East Burwood Reserve.
- d. I find that at approximately 11.00pm, James and an associate arrived at the East Burwood Reserve and sometime soon after, James was stabbed in the neck, and his vehicle was set alight using an accelerant with his body still inside the vehicle.
- e. While the totality of the evidence is indicative of there having been more than one person involved in James' death, there is no substantive evidence that corroborates this theory and I am therefore unable to make any finding along these lines.
- f. There is compelling evidence that the circumstances immediately surrounding James' death do not reflect a random, opportunistic event, rather a planned incident, given the apparent arrangements prior to the event, the location of the event and the availability of a fire accelerant.
- g. The evidence regarding the position of James when he was stabbed is equivocal. There is evidence to indicate he might have been positioned outside his vehicle when he was stabbed and placed back inside the vehicle before it was set alight, while it is also possible that he was stabbed while he was within the vehicle.
- h. There is also no substantive evidence to explain why James' body was found in the position of being seemingly wedged underneath an engaged, centrally located

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<sup>200</sup> Exhibit 15, pages 62, 67 and 76.

<sup>201</sup> T @ page 5.

handbrake, and I accept the evidence of Mr Kelleher and Dr Burke in this regard that the position appeared unusual.

- i. I am not in a position to find, on the totality evidence before me and on the balance of probabilities, the person or persons who caused James' death. If further evidence should become available, this matter can accordingly be re-opened.

#### **APPLICATION TO SET ASIDE FINDINGS OF 15 NOVEMBER 2015**

137. On 28 September 2017, the Court was informed that Christopher John Lavery had been convicted of murder by the Supreme Court of Victoria. The court was provided a copy of Justice Weinberg's sentencing remarks of even date.
138. On 16 January 2018, I received a Form 43 *Application to Set Aside Finding*.<sup>202</sup> The applicant listed subsequent criminal investigation, proceedings and conviction as due cause to set aside my original findings.
139. Section 77 of the Coroners Act allows a person to apply to the Coroners Court of Victoria for an order that some or all of the findings of a coroner after an investigation should be set aside. The section reads:

77 *Re-opening an investigation*

- (1) *A person may apply to the Coroners Court for an order that some or all of the findings of a coroner after an investigation (whether or not an inquest has been held) should be set aside.*
- (2) *Subject to subsection (3), the Coroners Court may order that—*
  - (a) *some or all of the findings be set aside; and*
  - (b) *if the Court considers it appropriate, that the investigation be re-opened.*
- (3) *The Coroners Court may only make an order under subsection (2) if it is satisfied that—*
  - (a) *there are new facts and circumstances; and*
  - (b) *it is appropriate to re-open the investigation.*
- (4) *For the purposes of an application made under this section, the Coroners Court must be constituted by the coroner who conducted the original investigation unless—*
  - (a) *the coroner who conducted the original investigation no longer holds the office of coroner; or*
  - (b) *there are special circumstances.*

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<sup>202</sup> Pursuant to Section 77 of the *Coroners Act 2008* (Vic).

140. In this instance, the applicant seeks to partially set aside the Form 37 *Finding into a Death with Inquest*, specifically the ‘Findings’ section after paragraph 135, and to include reference to recent criminal proceedings: *The Queen v John Christopher Lavery* [2017] VSC 587.
141. The Court may set aside findings and reopen an investigation under subsection 77(2) of the Coroners Act if it is satisfied that:
- (i) there are new facts and circumstances; and
  - (ii) it is appropriate to reopen the investigation.
142. This means that for the application to be successful, I must be satisfied that both elements of the above test are met. The meaning of each limb was subject to scrutiny by His Honour Justice Macaulay in *Mortimer v West* [2017] VSC 293.
143. The requirements of the first element of the test are clear, ‘*new facts and circumstances*’ encompasses facts and circumstances that are new and were not known to a Coroner at the time of the original investigation.
144. The second limb of the test is the intended mechanism by which the Coroner may consider the potential for new facts or circumstances to impact upon the original finding. Justice Macaulay interpreted the word ‘*appropriate*’ in section 77(b) as having its ordinary meaning:
- ... ‘suitable or fitting for a particular purpose’ or ‘proper, fitting’. So understood, the test is inherently broad and its application to the relevant issue has been deliberately left to the judgement of the decision maker... The legislature can be taken to expect the coroner to have specialist knowledge and experience and to have consciously entrusted him or her to make judgements as to what is required or desirable by way of investigation to achieve the purposes of the Act as applied to a particular death or event... however, the concept of what is appropriate is to be understood against the nature and purposes of the coroner’s powers and functions as defined in the Act.’<sup>203</sup>*
145. I responded to the application in the prescribed Form 44 *Determination Following Application to Set Aside Finding*. I was satisfied that the application provided appropriate reasons to partially set aside my findings.
146. In this case, it is clear that new facts have arisen whereby an individual, Christopher John Lavery, has been convicted of the murder of James Russouw. It is appropriate and necessary

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<sup>203</sup> *Mortimer v West* [2017] VSC 293, [49].

to include the conviction, as well as some sentencing remarks of the Honourable Justice Weinberg, in reformulated coronial findings.

147. In the circumstances my original findings of 9 November 2015 will be partially set aside to include the aforementioned facts and include new formal Coronial Findings in this amended Form 37 *Finding into a Death with Inquest*.

## **CRIMINAL INVESTGATIONS AND CONVICTION**

148. On 6 March 2016, investigators announced an increase in the reward from \$100,000 to \$1 million and, for the first time, released grainy CCTV footage of the man calling James from the phone box at the Burwood East Kmart complex on 7 March 2008. All avenues of the investigation had been exhausted at this time and this was a final attempt to attract further information.
149. I have been informed that Christopher John Lavery had provided an alibi for the night of Mr Russouw's death and that his alibi had been corroborated. However, following the increase of the reward for information and release of the CCTV footage, evidence was recovered that brought this alibi into question.
150. Subsequent investigation yielded further evidence regarding Mr Russouw's death, which resulted in Christopher John Lavery being charged with his murder, and, on 25 August 2017, a jury in the Melbourne Supreme Court found Christopher John Lavery guilty of the Murder of the James John Russouw.

## **Criminal Sentencing Remarks**

151. On 28 September 2017, Justice Weinberg sentenced Christopher John Lavery to 25 years imprisonment with a non-parole period of 21 years.<sup>204</sup> The 28 day period for the accused to lodge an appeal against his conviction or sentence has expired.
152. His Honour Justice Weinberg's sentencing remarks provided, *inter alia*, a summary of those events of 7 March 2008 contiguous to Mr Russouw's murder:<sup>205</sup>
- (i) *Christopher John Lavery, after a trial lasting several weeks, you were convicted last month of the murder of James Russouw. It is now my duty to sentence you for that offence.*

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<sup>204</sup> *R v Lavery* [2017] VSC 587.

<sup>205</sup> *Ibid* 1 – 2 [1] - [9].

### ***Circumstances of offending***

- (ii) *James Russouw was murdered a few minutes after 11:00 pm, on the night of 7 March 2008. He was stabbed to death, while seated in the driver's seat of his Jeep Cherokee, which was parked at that time at the East Burwood Reserve. The cause of death was a single stab wound to the neck, inflicted by a Wiltshire Staysharp kitchen knife. The stab wound had been inflicted from behind, with what must have been considerable force, as it penetrated right through the neck from back to front. Thereafter, Mr Russouw's body was set alight and burnt beyond recognition.*
- (iii) *The evidence was that, at about 11:03 pm on that night, Mr Russouw's car was captured on CCTV arriving at the East Burwood Reserve. There was a passenger in that vehicle. Self-evidently, given the timing of events, the passenger must have been the murderer. The jury, by their verdict, plainly concluded that you were that person.*
- (iv) *You and Mr Russouw had been friends for some time. You both attended Whitefriars College, in Donvale. For a considerable time, you had both dealt in cannabis. It seems that Mr Russouw trafficked in greater quantities of that drug than did you. However, the evidence suggests that you too sometimes dealt in substantial quantities. Mr Russouw was sourcing the cannabis primarily from a dealer in Sunshine, and on-sold it to friends and others. You also sold cannabis to friends and others.*
- (v) *It seems that, in the latter part of 2007 and early 2008, there was something of a shortage of cannabis in Melbourne. The Crown case was that Mr Russouw was anxious to obtain a substantial quantity of that drug in order to maintain supply to his regular purchasers.*
- (vi) *The Crown alleged that you had made it known to Mr Russouw, on the day in question, or perhaps somewhat earlier, that you could obtain for him a significant amount of cannabis, perhaps of the order of five pounds or so. It was further alleged that you arranged to meet him at the East Burwood Reserve on the night in question, where the sale would take place. The Crown submitted that, based on the evidence as a whole, Mr Russouw must have had on him something like \$13,000 in cash that evening in order to pay for that amount of cannabis.*
- (vii) *Moments after entering the Reserve at 11:03 pm, Mr Russouw's Jeep pulled up at a parking bay, a few metres from a score board, adjacent to a sporting oval. The Crown alleged that, suddenly, and without the slightest warning, you stabbed him from behind, as previously described.*



- (viii) *Mr Russouw died almost immediately. You then laid his body across the front seat of the vehicle, and somehow manoeuvred his upper half over on to the front passenger side, partly under the handbrake. You then doused his body with petrol. You had brought that petrol with you, contained in a Décor drink bottle.*
- (ix) *You left the rear passenger door slightly ajar. You sprayed petrol along a five metre trail, from the rear of the vehicle to the drink bottle, which you then placed on the ground. You set fire to that petrol trail. Plainly, you did so in such a manner as to avoid endangering yourself from the fire.*

### **Sentencing Principles**

151. His Honour considered the relevant sentencing principles in turn. In particular, Justice Weinberg noted: the level of planning involved in this murder; the breach of trust undertaken by using a longstanding friendship to lure James into a vulnerable position; the motivation for the murder, namely, financial gain.<sup>206</sup> His Honour also referred, *inter alia*, to the brutality of the murder and the burning of James' corpse as aggravating factors to the offence.<sup>207</sup>
152. Justice Weinberg considered mitigating factors to the crime and gave special attention to Christopher Lavery's age at the time of James' murder.<sup>208</sup> His Honour considered the fact that leniency has traditionally been afforded to younger offenders, owing to their relative immaturity.<sup>209</sup> However, Justice Weinberg noted that age and maturity are not necessarily correlative, and the lack of impulsivity involved in Christopher Lavery's crime somewhat undermined the use of his youth as a mitigating factor.<sup>210</sup> His Honour determined that Christopher Lavery's prospects of rehabilitation seemed very good, and that these prospects constituted mitigating factors to his crime.<sup>211</sup>

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<sup>206</sup> R v Lavery above n 204 8 – 9 [41] – [42].

<sup>207</sup> Ibid 12 – 13 [59].

<sup>208</sup> 22 years of age.

<sup>209</sup> R v Lavery above n 204 11 [52].

<sup>210</sup> Ibid.

<sup>211</sup> Ibid [54].

## FINDINGS


1. **I find** that the identity of the deceased is James John Russouw.
2. **I find** that James died from a stab injury to the neck.
3. **I find** that on 7 March 2008, James drove his vehicle and collected Christopher John Lavery, with the belief that they would conduct a drug-related transaction at the East Burwood Reserve, in circumstances where Christopher John Lavery induced James to believe this false notion.
4. **I find** that at approximately 11.00pm, James and Christopher John Lavery arrived at the East Burwood Reserve, and, sometime soon after, Christopher John Lavery stabbed James in the neck, which killed him almost instantly.
5. **I find** that Christopher John Lavery subsequently set James' vehicle alight with James' body inside the vehicle, in circumstances where he used petrol as an accelerant.
6. AND where I had previously made a finding that there was compelling evidence that the circumstances immediately surrounding James' death did not reflect a random nor opportunistic event, but rather a planned incident, **I find** that Christopher John Lavery planned to take the life of James for financial gain and, in doing so, set up a false corroborated alibi in order to facilitate his crime.

Pursuant to sections 72(5) and 73(1) of the *Coroners Act 2008* (Vic), I direct that the Findings be published on the internet.

I direct that a copy of these Findings be provided to the following:

- Mr Cecil Russouw
- Mr Terence Sullivan of Counsel on behalf of Scott O'Brien
- Mr Saul Holt of Counsel on behalf of Anthony Ngonvoraraj
- Ms Robin Dyll, Victoria Legal Aid on behalf of Mr Anthony Ngonvoraraj
- Mr Phillip Bloemen, PICA Criminal Lawyers on behalf of Mr Scott O'Brien
- Leading Senior Constable Amanda Maybury
- Detective Senior Constable Simon Hunt

Signature:

  
\_\_\_\_\_  
AUDREY JAMIESON  
CORONER



Date: 17 April 2018